SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 705.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

O. T. ANDERSON.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

INDEX.

	Original.	Print.
Caption	1	1
Indictment	2	1
Demurrer to indictment	8	3
Opinion, Bean, J.	10	4
Order on demurrer	15	6
Petition for writ of error	17	6
Order allowing writ of error	19	7
Assignment of errors	21	7
Writ of error (copy)	23	8
Citation and service (copy)	26	9
Clerk's certificate	27	9

1 In the District Court of the United States for the District of Oregon.

July term, 1911.

Be it remembered that on the 3 day of October, 1911, there was duly filed in the District Court of the United States for the District of Oregon, an indictment in words and figures as follows, to wit:

2 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
vs.
O. T. ANDERSON.

Indictment for violation of act of Congress of July 4, 1884, 23 Stats. L., 94.

UNITED STATES OF AMERICA,
District of Oregon, ss:

The grand jurors of the United States of America for the district of Oregon, duly empaneled, sworn, and charged to inquire within and for the said district, upon their oaths and affirmations do find, allege, and present:

That on the 17th day of June, 1901, an agreement was entered into between an agent of the United States, to wit, James McLaughlin, who was then and there acting for and on behalf of the said United States, and the Klamath and Modoc Tribes of Indians and the Yahooskin Band of Snake Indians, all of which said Indians belong to the Klamath Indian Reservation, located in the State of Oregon, by the terms of which said agreement the said Indians ceded to the Government of the United States approximately six hundred thousand acres of land, for which said land the said United States was to pay to the said Indians the sum of $537,007.20 in the manner and form as follows, that is to say, $25,000 of the said amount was to be paid in cash to be distributed amongst the said Indians; $350,000 of the said amount was to be deposited with the Treasurer
3 of the United States to the credit of the said Indians, which said last-named sum of money was to draw interest, and the interest thereof was to be disbursed to the said Indians in annual payments; that the remaining portion of the said $537,007.20, after the payment of attorneys fees, was to be expended for the benefit of the said Indians, under the direction of the Secretary of the Interior, and upon request of the said Indians acting through the proper Indian agent for the following purposes; that is, in the drainage or irrigation of their land and in the purchase of stock cattle for issue to them, and for such other purposes as might in the discretion of the Secretary of the Interior, best promote the welfare of the said In-

dians, including a reasonable cash payment per capita not exceeding ten per centum of the principal sum.

That by the act of Congress approved June 21, 1906 (34 Stats. L., 368), the said agreement was duly ratified and the sum of $537,007.20 was appropriated out of the money in the Treasury of the United States, for the purpose of carrying into effect the aforesaid agreement, it being provided that out of the sum so appropriated "$350,000 shall be deposited in the Treasury of the United States to the credit of said Indians, and the remainder shall be expended as provided in the 3rd article of said agreement."

The grand jurors further find that, acting under authority of the aforesaid agreement and the act of Congress ratifying the same, the Indians of the Klamath Indian Reservation made requisition through the United States Indian agent in charge of said reservation,
4 to the proper officers of the Government for an issue of cattle to be made to the said Indians, and thereafter the Indian Department advertised in the manner provided by law for the purchase of 4,500 heifers to be delivered at the Klamath Agency for issue to the said Indians; that pursuant to the said advertisement and in conformity therewith and after receiving proper bids, the Commissioner of Indian Affairs did, on May, 1909, purchase of and from one Wm. Hanley, of Portland, Oregon, 4,000 heifers, which were delivered during the month of August, 1909, to the superintendent of the Klamath Indian Reservation at Klamath Agency, Oregon, and thereafter payment was duly made to the said Wm. Hanley from money appropriated to carry into effect the aforesaid agreement.

That after the cattle were duly delivered to the superintendent of said Indian reservation they were branded with the United States Government brand and were issued to the various Indians on said reservation who were entitled thereto, and that each Indian upon receipt of his apportioned number of cattle branded the same with his own individual brand; that Frank Lynch and Elmer Lynch were two Indians residing on said Klamath Indian Reservation who were entitled to and who received cattle that had been purchased and issued in the manner aforesaid.

And the grand jurors further find, allege, and present that O. T. Anderson on, to wit, the 24th day of October, 1910, in Klamath County, in the State and district of Oregon, and within the jurisdiction of this court, did then and there knowingly and unlaw-
5 fully purchase of and from Frank Lynch and Elmer Lynch, who were then and there Indians living and residing within the limits of the Klamath Indian Reservation and wards of the Government, fifteen head of cattle, a more accurate description of which cattle is to the grand jurors aforesaid unknown, said cattle being then and there in the possession of the said Frank Lynch and Elmer Lynch, and which said cattle so purchased as aforesaid by the said defendant had been before that time bought by the Government of the United States and issued to the said Frank Lynch and Elmer Lynch in the manner heretofore set out in this indictment,

and that the said O. T. Anderson, defendant above named, at the time of so purchasing the said cattle from the said Indians was not a member of the tribe of Indians to which the said Frank Lynch and Elmer Lynch belonged, nor was he a member of any Indian tribe, and that the sale of said cattle of the said Frank Lynch and Elmer Lynch and the purchase thereof by the said O. T. Anderson, defendant as aforesaid, was without the consent in writing or otherwise by the agent in charge of said Indians, and that at the time of the purchase of said cattle by the said O. T. Anderson as aforesaid he, the said O. T. Anderson, well knew that the said Frank Lynch and Elmer Lynch were Indians and wards of the Government of the United States and that the cattle so purchased by him had before that time been issued by the Government of the United States to the aforesaid Indians, contrary to the form of the statute in
6 such case made and provided and against the peace and dignity of the United States of America.

Dated at Portland, Oregon, this 2nd day of October, 1911.

A true bill.

WORTH HUSTON,
Foreman U. S. Grand Jury.
WALTER H. EVANS,
Assistant U. S. Attorney.

Witnesses sworn and examined before U. S. grand jury: Edson Watson, Levi Walker.

Filed Oct. 3, 1911.

A. M. CANNON,
Clerk, U. S. Dist. Court, Oregon.

7 And afterwards, to wit, on the 15 day of November, 1911, there was duly filed in said court a demurrer, in words and figures as follows, to wit:

8 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
vs.
O. T. ANDERSON.

The defendant, O. T. Anderson, demurs to the indictment herein for the reason and on the ground that said indictment does not state facts sufficient to constitute a crime.

EMMONS & WEBSTER,
Attorneys for Defendant.

I, L. R. Webster, one of the attorneys for the defendant, certify that in my opinion the foregoing demurrer is well founded in law.

LIONEL R. WEBSTER.

Nov. 15, 1911.

9 And afterwards, to wit, on the 15 day of May, 1912, there was duly filed in said court an opinion, in words and figures as follows, to wit:

10 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA
vs.
O. T. ANDERSON.

BEAN, District Judge:

An indictment was returned by the grand jury on the 3rd day of October, 1911, against the defendant for purchasing cattle from an Indian in alleged violation of the act of Congress of July 4, 1884 (23 St. at L., pp. 94), which provides—

"That where Indians are in possession or control of cattle or their increase, which have been purchased by the Government, such cattle shall not be sold to any person not a member of the tribe to which the owners of the cattle belong, or to any citizen of the United States, whether intermarried with the Indians or not, except with the consent in writing of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void, and the offending purchaser on conviction thereof shall be fined not less than $500.00, and imprisoned not less than six months."

A demurrer to the indictment has been interposed on the ground that the indictment does not state facts sufficient to constitute a crime because the cattle which he is charged with having bought were not in fact purchased by the Government within the meaning of the act of Congress quoted.

The indictment charges that in June, 1901, an agreement was entered into between the agent of the United States and the
11 Indians belonging to the Klamath Agency by the terms of which the latter ceded to the Government about 600,000 acres of land for the sum of $575,000.00, $25,000 of this amount to be paid in cash to be distributed among the Indians, $350,000 to be deposited with the Treasurer of the United States to the credit of the Indians, interest to be paid to them annually. The balance, after the payment of attorney fees, to be expended for the benefit of the Indians under the direction of the Secretary of the Interior, upon request of the Indians through the agent, in the drainage or irrigation of their lands and the purchase of stock cattle for issue to them, and for such other purposes as might, in the discretion of the Secretary of the Interior, best promote their welfare. The agreement was ratified by Congress in June, 1906 (34 St. at L., 367), the necessary appropriation made to carry it into effect, it being provided that of the sum so appropriated, "$350,000.00 shall be deposited in the Treasury of the

United States to the credit of said Indians, and the remainder shall be expended as provided in the third article of said agreement."

Acting under authority of this agreement and the act of Congress ratifying same, the Indian Department advertised, in April, 1909, for 4,500 heifers to be delivered at the Klamath Agency for issue to the Indians. Pursuant to this advertisment and in conformity therewith, and after receiving proper bids, the Commissioner of Indian Affairs, in May, 1909, purchased of William Hanley, of Portland, Oregon, 4,000 heifers, which were delivered during the month
12 of August, 1909, and paid for from the money ap[illegible]ated to carry into effect the agreement referred to. After [illegible]e cattle were delivered they were branded with the Government brand and issued to the various Indians entitled thereto, and each Indian, on receipt of his apportioned number, promptly branded them with his own individual brand. It is a part of these cattle that the defendant is charged with having purchased in violation of the act of 1884.

Under the facts charged by this indictment the defendant is not, in my opinion, guilty of the crime attempted to be charged against him. The statute under which he is being prosecuted is a part of the act of July 4, 1884, making an appropriation for the support and contingent expenses of the Indian Department. It provides that the President may use any sum appropriated for the subsistence of the Indians and not absolutely necessary for that purpose for the purchase of cattle for the benefit of the Indians for whom such appropriation is made. (23 St. at L., 97.) Cattle purchased with money so appropriated are the property of the United States. They do not cease to be such because of their delivery to the Indians for a particular purpose and with a limited right of disposal thereof. It was to protect such property and to prevent the purchase thereof from the Indians without the consent of the Government that the criminal provision of the statute was inserted. Where, however, cattle are purchased by an Indian with his own funds or by some officer of the Government with funds belonging to him, the law referred to
13 can have no application and was not so intended. The cattle in controversy here were bought with money paid for certain lands ceded by the Indians to the United States. They were therefore purchased with money which belonged to the Indians and not to the Government. The Secretary of the Interior, in making the purchase, acted as the agent and representative of the Indians in the disbursement or expenditure of their money in pursuance of a contract with them authorizing him to do so. When the cattle were purchased and issued to the Indians they became the property of the Indians, and a purchaser thereof would not be liable criminally for a violation of the statute under which the present indictment was framed.

It follows that the demurrer should be overruled as to the first point and sustained as to the second, and it is so ordered.

14 And afterwards, to wit, on Wednesday the 15 day of May, 1912, the same being the 63 judicial day of the regular March, 1912, term of said court; present, the Honorable Robert S. Bean, United States district judge, presiding, the following proceedings were had in said cause, to wit:

15 In the District Court of the United States for the District of Oregon.

MAY 15, 1912.

THE UNITED STATES
v.
O. T. ANDERSON. } No. 5403.

This cause heretofore submitted upon demurrer to indictment herein came on regularly at this time for the decision and ruling of the court, and thereupon it is ordered that the demurrer be, and hereby is, overruled as to the first point and sustained as to the second point, and thereupon plaintiff gave notice of appeal.

16 And afterwards, to wit, on the 27 day of May, 1912, there was duly filed in said court a petition for writ of error, in words and figures as follows, to wit:

17 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
O. T. ANDERSON, DEFENDANT IN ERROR. } At law.

Petition for write of error.

Comes now the United States of America, plaintiff herein, by Walter H. Evans, its assistant United States attorney, and says that on or about the 15th day of May, 1912, the district court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may issue in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

WALTER H. EVANS,
Attorney for Plaintiff in Error.

Due legal and timely service of the foregoing petition for writ of error is hereby acknowledged by me at Portland, Oregon, this 27 day of May, 1912.

EMMONS & WEBSTER.
Attorneys for Defendant in Error.

8 And afterwards, to wit, on the 27 day of May, 1912, there was duly filed in said court an o'der allowing petition, in words nd figures as follows, to wit:

9 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
O. T. ANDERSON, DEFENDANT. } At law.

On this 27th day of May, 1912, comes the plaintiff, the United States of America, by its assistant United States attorney for the district of Oregon, and presents to the court its petition praying for the allowance of the writ of error and an assignment of errors intended to be urged by him, praying also that a transcript of the record, proceedings, and papers upon which judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other proceedings may be had as are proper in the premises.

In consideration whereof the court does allow the writ of error.

CHAS. E. WOLVERTON, *Judge.*

20 And afterwards, to wit, on the 27 day of May, 1912, there was duly filed in said court an assignments of error, in words and figures as follows, to wit:

21 In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
O. T. ANDERSON, DEFENDANT.

Assignment of errors.

The plaintiff in this action in connection with its petition for writ of error makes the following assignment of errors which he avers exists:

I.

The court erred in sustaining the demurrer of the defendant.

II.

The court erred in dismissing the indictment in said cause.

III.

The court erred in holding and adjudging that the cattle alleged to have been purchased by the defendant from Frank Lynch and Elmer

Lynch were not cattle which had been purchased and issued by th Government of the United States of America to the said Fran Lynch, an Indian, and Elmer Lynch, an Indian.

IV.

The court erred in holding and adjudging that the indictment i said cause did not charge an offense against the peace and dignit of the United States.

WALTER H. EVANS,
Assistant United States Attorney for the District of Oregon.

22 And afterwards, to wit, on the 29 day of May, 1912, ther was duly filed in said court, a writ of error in words an figures as follows, to wit:

23 In the Supreme Court of the United States.

UNITED STATES OF AMERICA
vs.
O. T. ANDERSON.

Writ of error.

The President of the United States of America, to the judges of th District Court of the United States for the District of Oregon greeting:

Because in the rendition of the judgment on the demurrer to th indictment herein, which is in the said court before you, betwee the United States of America, plaintiff, and O. T. Anderson, de fendant, a manifest error has happened, to the great damage o the said plaintiff as by his petition appears. We being willing tha the error, if any has been, should be duly corrected and full an speedy justice done to the parties aforesaid in this behalf, do com mand you, if judgment be therein given, that under your seal, dis tinctly and openly, you send the record and proceedings with al things concerning the same to the Supreme Court of the Unite States, together with this writ so that you may have the same a the city of Washington on the 25th day of June next, in the sai Supreme Court, to be then and there held, that the records an proceedings aforesaid being inspected, the said Supreme Court ma cause further to be done to correct that error, what of right
24 and according to the laws and customs of the United State should be done.

Witness the Honorable Edwin D. White, Chief Justice of th United States, the 28 day of May in the year of your Lord on

thousand nine hundred and twelve, and of the Independence of the United States of America the one hundred and thirty-sixth.

[SEAL.] A. M. CANNON,
Clerk of the District Court of the United States for the District of Oregon.

Allowed by—

CHAS. E. WOLVERTON,
District Judge.

Due, legal, and timely service of the within writ of error is hereby accepted by me at Portland, Oregon, this 28 day of May, 1912.

EMMONS & WEBSTER,
Attorneys for Defendant in Error.

25 And afterwards, to wit, on the 29 day of May, 1912, there was duly filed in said court, a citation on writ of error in words and figures as follows, to wit:

26 In the Supreme Court of the United States.

THE UNITED STATES OF AMERICA, *ss:*

To O. T. Anderson, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden in the city of Washington on the 25th day of June next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the District of Oregon, wherein the United States of America is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the plaintiff in error as in the said writ of error mentioned should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the city of Portland in the district above named, this the 28 day of May, in the year of our Lord one thousand nine hundred and twelve.

CHAS. E. WOLVERTON,
Judge of the District Court of the United States for the District of Oregon.

Due, legal, and timely service of the within citation is hereby accepted by me at Portland, Oregon, this 28 day of May, 1912.

EMMONS & WEBSTER,
Attorneys for Defendant in Error.

27 UNITED STATES OF AMERICA,
District of Oregon, ss:

I, A. M. Cannon, clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered 1 to , inclusive, contain and are a true transcript

of the proceedings had in said court in the cause therein entitled "The United States of America vs. O. T. Anderson, Defendant," and includes in itself, and not by reference, all the pleadings, papers, orders, and journal entries as the same appear of record and on file in my office and official custody.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 19 day June, 1912.

[SEAL.] A. M. CANNON, *Clerk.*

(Indorsement on cover:) File No. 23280. Oregon D. C. U. S. Term No., 705. The United States, plaintiff in error, vs. O. T. Anderson. Filed July 8th, 1912. File No., 23280.

7

Office Supreme Court, U. S.
FILED.
DEC 20 1912
JAMES H. McKENNEY,
CLERK.

No. 705.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

THE UNITED STATES, *Plaintiff in Error,*

v.

O. T. ANDERSON, *Defendant in Error.*

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

MOTION BY THE UNITED STATES TO ADVANCE.

The Solicitor General, on behalf of the United States, moves that this case (as it is here under the the Criminal Appeals Act) be advanced for early hearing, and as the question involved is simple that it be placed on the *summary docket.*

Anderson was indicted for an unauthorized purchase of cattle from two Indians in violation of the act of July 4, 1884, 23 Stat. 94, which provides that where Indians have possession of cattle or their increase "which have been purchased by the Government," any person (belonging to certain classes

which include Anderson) purchasing such cattle from the Indians without the consent of the agent of the tribe shall be punished.

By an agreement with the Klamath Indians and the act of June 21, 1906, 34 Stat. 325, 367, ratifying it, the United States bought certain lands from the Indians, and it was provided that part of the purchase money should be expended for the benefit of the Indians under the direction of the Secretary of the Interior in the purchase of stock for them; and the act made an appropriation for that purpose. The cattle here in question were cattle bought by the Indian Office under this agreement and issued to the Indians. A demurrer was sustained on the ground that these were not cattle "purchased by the Government" within the meaning of the act of July 4, 1884, and this is the only question involved.

Notice of this motion has been given opposing counsel.

WM. MARSHALL BULLITT,
Solicitor General.

DECEMBER 23, 1912.

○

INDEX.

	Page.
I. QUESTION INVOLVED	1
II. STATEMENT OF THE CASE	2–6
1. Terms of agreement between Klamath Indians and United States	2
2. Purchase by the Government of cattle and its issuance to the Klamath Indians	4–6
3. Purchase by the plaintiff in error of cattle from the Indians without the consent of the Indian agent	6
4. Decision of the lower court	7
5. Assignment of errors	8
III. ARGUMENT	8
FIRST POINT. The transaction is within the letter of the act; that is, the cattle were really "purchased by the Government"	9–10
1. The cattle were purchased by the Secretary of the Interior pursuant to specific authority by Congress	9
SECOND POINT. The cattle purchased by the Secretary of the Interior under the act of June 21, 1906, were "purchased by the Government" within the spirit and intent (as well as the letter) of the act of 1884, which prohibited outsiders from buying from the Indians any of their cattle "which have been purchased by the Government"	11–17
1. The object of the criminal provision was not to protect the Government property but was to protect the Indians	12–14
2. The criminal provision applies whether the title to the cattle be considered in the Government or in the Indians	15

Page.

3. There is no difference between the Government's purchase of stock cattle for the benefit of the Indians out of surplus subsistence appropriations and its purchase for issuance to the Indians in exchange for ceded lands 15

4. It has been the policy of the Government to prevent the whites from purchasing from the Indians cattle which have been issued to the Indians in exchange for ceded lands 16

Act May 1, 1888, 25 Stat. 113, 114.

Act June 10, 1896, 29 Stat. 321, 355.

In the Supreme Court of the United States.

OCTOBER TERM, 1912. No. 705.

THE UNITED STATES, *Plaintiff in Error,*

v.

O. T. ANDERSON, *Defendant in Error.*

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE UNITED STATES.

This case is here under the criminal appeals act, and it raises a single clear-cut question as to the meaning of the following continuing provision of the Indian appropriation act of July 4, 1884 (c. 180, 23 Stat. 76, 94):

> That where Indians are in possession or control of cattle or their increase *which have been purchased by the Government* such cattle *shall not be sold* to any person not a member of the tribe to which the owners of the cattle belong or to any citizen of the United States whether intermarried with the Indians or not *except with the consent in writing* of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in

violation of this provision shall be void and *the offending purchaser* on conviction thereof shall be fined not less than five hundred dollars and imprisoned not less than six months.

Anderson bought 15 head of cattle from certain Indians on the Klamath Indian Reservation without the consent of the agent. He was indicted. The lower court sustained a demurrer on the ground that the cattle in question had not been "purchased by the Government" within the meaning of the statute.

STATEMENT OF THE CASE.

The indictment alleged the following facts:

By an agreement dated June 17, 1901 (ratified by Congress in the Indian appropriation act of June 21, 1906, 34 Stat. 325, 367, 368) the Klamath Indians ceded certain of their lands to the United States in consideration of $537,007.20, paid and to be paid as follows:

$25,000	cash to the Indians.
350,000	to be deposited with the Treasurer of the United States to the credit of the said Indians, to draw interest, which interest was to be annually paid to the Indians.
162,007.20	(after deducting lawyers' fees) being "The remainder of said sum of $537,007.20 * * * *shall be expended for the benefit of said Indians, under the direction of the Secretary of the Interior,* upon requisition of the Indians through the U. S. Indian agent, in the drainage and irrigation of their lands, *and the*

purchase of stock cattle for issue to said Indians, and for such other purposes as may, in his opinion, best promote their welfare." (34 Stat. 367, 368.)

$537,007.20

In other words, the money (or a part of it) was to be expended by the Secretary of the Interior for the benefit of the Indians in the purchase of stock cattle for them.

Congress, by the said Indian appropriation act of June 21, 1906, appropriated $537,007.20 to carry the agreement into effect with the express provision that the "remainder shall be expended as provided in the third article of said agreement." (34 Stat. 368.)[1]

---

[1] The Act of June 21, 1906, 34 Stat. 325, 367, contains the agreement of June 17th, 1901, between the United States and the Indians; which, together with the statutory ratification thereof, is as follows:

Whereas James McLaughlin, an Indian inspector for and on behalf of the Secretary of the Interior, under and by virtue of an Act of Congress approved July first, eighteen hundred and ninety-eight (Thirtieth United States Statute Laws, page five hundred and seventy-one), entitled "An Act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-nine, and for other purposes," did, on the seventeenth day of June, nineteen hundred and one, make and conclude an agreement with the Klamath and Modoc tribes and Yahooskin band of Snake Indians, residing on the Klamath Indian Reservation, in the State of Oregon, which agreement is as follows:

This agreement, made and entered into on the seventeenth day of June, nineteen hundred and one, by and between

In accordance with the provisions of the contract, the Indians made the proper requisition for the

---

James McLaughlin, U. S. Indian inspector, on the part of the United States, and the Klamath and Modoc tribes and Yahooskin band of Snake Indians, belonging to the Klamath Indian Agency, in the State of Oregon, witnesseth:

Article I. The said Klamath and other Indians belonging to the Klamath Agency, Oregon, for the consideration hereinafter named, do hereby cede, surrender, grant, and convey to the United States all their claim, right, title, and interest in and to all that part of the Klamath Indian Reservation lying between the boundaries described in the treaty with said Indians concluded October fourteenth, eighteen hundred and sixty-four, and proclaimed February seventeenth, eighteen hundred and seventy, as confirmed by the Klamath boundary commission in their report to the Secretary of the Interior, dated December eighteenth, eighteen hundred and ninety-six, and the reservation boundary lines as established by the survey approved in eighteen hundred and eighty-eight by the General Land Office, the tract of land hereby ceded and relinquished comprising six hundred and twenty-one thousand eight hundred and twenty-four acres.

Article II. In consideration of the land ceded, relinquished, and conveyed by Article I of this agreement, and in full of all claims and demands of said Klamath and other Indians arising or growing out of the erroneous survey of the outboundaries of their reservation in eighteen hundred and seventy-one, the United States stipulates and agrees to pay to and expend for said Indians, in the manner hereinafter provided, the sum of five hundred and thirty-seven thousand and seven dollars and twenty cents ($537,007.20), being at the rate of eighty-six and [illegible] (86.33) cents per acre, the price awarded for said lands by the Klamath boundary commissioners in their report to the Secretary of the Interior, dated December eighteenth, eighteen hundred and ninety-six.

Article III. It is agreed that of the amount to be paid to the said Klamath and other Indians, as stipulated in Article II of this agreement, the sum of twenty-five thousand dollars shall be paid in cash pro rata, share and share alike, to each man, woman, and child belonging to said Klamath and other tribes and under the jurisdiction of the Klamath Indian Agency, within one hundred and fifty days from and after the date of the ratification of this agreement, and the sum of three hundred and fifty thousand dollars shall be deposited in the Treasury of the United States to the credit of said Indians and shall draw interest at the rate of five per centum per annum, which interest shall be paid to

purchase of stock cattle; the Commissioner of Indian Affairs (acting under the Secretary of the Interior)

said Indians annually per capita in cash and that the remainder of said sum of five hundred and thirty-seven thousand and seven dollars and twenty cents, after the payment of the legal fees of attorneys having duly approved contracts, shall be expended for the benefit of said Indians, under the direction of the Secretary of the Interior, upon requisition of the Indians through the U. S. Indian Agent, in the drainage and irrigation of their lands, and the purchase of stock cattle for issue to said Indians, and for such other purposes as may, in his opinion best promote their welfare: *Provided*, That beneficiaries whose allotments will not be benefited by the irrigation systems constructed under this provision shall not bear any of the expense of such irrigation construction, and shall, as nearly as practicable, receive an equivalent in value of the stock cattle or other articles herein contemplated, that each beneficiary may thus receive his or her proportionate share of the benefits of this provision: *And provided further*, That in addition to the interest on the fund deposited in the U. S. Treasury, the Secretary of the Interior may, in his discretion, expend for the benefit of said Indians, including reasonable cash payments per capita, not to exceed ten per centum per annum of the principal fund, upon a majority of the male adult Indians of Klamath Agency petitioning for same through the Commissioner of Indian Affairs.

Article IV. It is understood that nothing in this agreement shall be construed to deprive the said Klamath and other Indians of the Klamath Agency of any benefits to which they are entitled under existing treaties, not inconsistent with the provisions of this agreement.

Article V. This agreement shall take effect and be in force when signed by U. S. Indian Inspector James McLaughlin, and by a majority of the male adult Indians, parties thereto, and when approved by the Secretary of the Interior and accepted and ratified by the Congress of the United States.

For the purpose of carrying into effect the foregoing agreement the sum of five hundred and thirty-seven thousand and seven dollars and twenty cents is hereby appropriated out of any money in the Treasury not otherwise appropriated, and the said agreement is hereby ratified and confirmed. Of the said sum so appropriated, three hundred and fifty thousand dollars shall be deposited in the Treasury of the United States to the credit of said Indians and the remainder shall be expended as provided in the third article of said agreement.

purchased the cattle with the money so appropriated by Congress to carry out the agreement, and the cattle were first branded with the United States Government brand and were then issued to the Indians, each of whom also branded the cattle with his own individual brand.

The plaintiff in error Anderson was not a member of the Klamath or any other Indian tribe; and without the consent of the agent in charge of the Indians, he bought some of the cattle from two of the Indians.

The Government claims that such purchase was in violation of the following provision of the Indian appropriation act of July 4, 1884, 23 Stat. 76, 94:

> That where Indians are *in possession or control of cattle* or their increase *which have been purchased by the Government*, such cattle *shall not be sold* to any person not a member of the tribe to which the owners of the cattle belong or to any citizen of the United States whether intermarried with the Indians or not, *except with the consent in writing of the agent of the tribe* to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void and *the offending purchaser* on conviction thereof *shall be fined* not less than five hundred dollars *and imprisoned* not less than six months.

Decision of the lower court.

The district judge, in sustaining the demurrer, said (R., 5):

> The statute under which he is being prosecuted is a part of the act of July 4, 1884, making an appropriation for the support and contingent expenses of the Indian Department. It provides that the President may use any sum appropriated for the subsistence of the Indians, and not absolutely necessary for that purpose, for the purchase of cattle for the benefit of the Indians for whom such appropriation is made. (23 Stat., 97.) Cattle purchased with money so appropriated are the property of the United States. They do not cease to be such because of their delivery to the Indians for a particular purpose and with a limited right of disposal thereof. It was to protect such property and to prevent the purchase thereof from the Indians without the consent of the Government that the criminal provision of the statute was inserted. Where, however, cattle are purchased by an Indian with his own funds, or by some officer of the Government with funds belonging to him, the law referred to can have no application and was not so intended. The cattle in controversy here were bought with money paid for certain lands ceded by the Indians to the United States. They were therefore purchased with money which belonged to the Indians and not the Government. The Secretary of the Interior, in making the purchase, acted as the agent and representative of the

> Indians in the disbursement or expenditure of their money in pursuance of a contract with them authorizing him to do so. When the cattle were purchased and issued to the Indians they became the property of the Indians, and a purchaser thereof would not be liable criminally for a violation of the statute under which the present indictment was framed.

This involves a construction of the statute on which the indictment was founded, and the case was brought here under the criminal appeals act.

Assignment of errors.

The assignment of errors raises the single point whether the cattle purchased by Anderson were cattle "which have been purchased by the Government" within the meaning of the act of July 4, 1884. (R., 7.)

ARGUMENT.

Although it would still be unsound, yet there might be some plausibility in the conclusion reached by the District Judge if the cattle in question had been bought with moneys already strictly belonging to the Indians, and if the Indian Department, in purchasing them, had been merely acting as an agent of the Klamath Indians. But that is not the real situation, and we propose to show that Anderson's act in the circumstances set out in the indictment comes within both (1) the letter and (2) the spirit of the criminal provision of the act of July 4, 1884.

FIRST POINT.

The transaction is within the letter of the act; that is, the cattle were really "purchased by the Government."

The cattle were bought under that part of the appropriation made by the act of June 21, 1906, which provided that out of the whole sum appropriated to meet the obligation of the agreement with the Indians—

> the remainder [that is, after deducting the $350,000 deposited to the credit of the Indians] shall be expended as provided in the third article of said agreement.

The money did not actually belong to the Indians. On the contrary, it belonged to the United States. It was to be expended by the Interior Department, as authorized by the specific appropriation provision, just as other Government funds are expended under specific authority, as, for example, for public buildings, improvement of rivers and harbors, etc. The Government was expending its own money for a specific purpose. Surely the cattle bought with the money were "purchased by the Government."

The District Judge says that the cattle were purchased with money which belonged to the Indians and not to the Government. That is not an accurate statement of the transaction. The cattle were not bought with money which was or ever had been in the possession of the Indians. They were not even bought out of funds which had been set aside to the credit of the Indians in the Treasury.

The Secretary of the Interior in making the purchase did not act in any wise as the agent or representative of the Indians. The Indians could not authorize the Secretary to spend the money of the United States. The power he exercised in this case was derived from Congress and from Congress alone. He acted essentially as an officer of the Government designated to execute a specific governmental purpose, and what he did was clearly an act of the Government.

Since, then, the cattle were bought with money which actually belonged to the Government, and since the transaction was conducted under the direction of an officer of the Government solely because he had governmental authority to act; that is to say, since it was an act of the Government, it is literally and exactly true that the cattle were "purchased by the Government." All this was done in pursuance of the agreement of June 17th, 1901. So the complete statement of the situation is that the cattle were purchased by the Government and given to the Indians because it had been agreed that this should be done as a part of the consideration for the lands ceded by the Indians to the Government.

The case is *within the words* of the statute; for the Indians from whom the defendant bought the cattle are Indians of the Klamath Indian Reservation and are under an Indian agent; the Government purchased the cattle; the Klamath Indians were in possession and control of the cattle; the plaintiff in error, who was not an Indian, bought the cattle without the consent of the agent in charge.

SECOND POINT.

The cattle purchased by the Secretary of the Interior under the act of June 21, 1906, were "purchased by the Government" within the spirit and intent (as well as the letter) of the act of 1884, which prohibited outsiders from buying from the Indians any of their cattle "which have been purchased by the Government."

The criminal provision was enacted as a part of the Indian appropriation act of July 4, 1884. In the same act there was a provision authorizing the Secretary of the Interior to use any surplus from subsistence appropriations "for the purchase of stock cattle for the benefit of the tribe for which such appropriation is made." (23 Stat. 97.) This provision has been frequently repeated in Indian appropriation acts. Because this provision and the criminal provision happen to be in the same act, although widely separated by pages of intervening statutory enactments, the District Judge finds them to be connected in some way and argues that the criminal provision was intended to protect only cattle actually purchased by the Government from surplus subsistence appropriations, under the authority of the provision in that act or possibly of any reenactments of it in subsequent appropriation acts.

By the act of 1884 any surplus moneys in the appropriation may be spent by the Secretary of the Interior in the purchase of cattle for the benefit of the Indians; and the criminal provision prevents outsiders purchasing such cattle from the Indians, because the cattle were "purchased by the Govern-

ment." What difference is there between cattle so acquired and the cattle acquired under the act of 1906, which says the money shall be expended by the Secretary of the Interior for the benefit of the Indians in the purchase of stock cattle?

It is difficult to see how the cattle in the one case are "purchased by the Government" and *not* purchased in the other case.

The lower court said (R. 5):

> Cattle purchased with money so appropriated are the property of the United States. They do not cease to be such because of their delivery to the Indians for a particular purpose and with a limited right of disposal thereof. It was to protect such property and to prevent the purchase thereof from the Indians without the consent of the Government that the criminal provision of the statute was inserted.

There is nothing in the structure and purpose of the act of July 4, 1884, to support the lower court's view of the legislative intent of this provision. The act was the annual Indian appropriation act, and so far as any general purpose may be ascribed to it, it was simply to take care of the Indians. It fills 22 pages in the Statutes at Large and in addition to making appropriations for such varied objects as the subsistence, civilization, and education of the Indians, incidental expenses of the service, enforcement of liquor laws, interest on trust funds, Indian depredation claims, irrigation, etc., it contains general legislation equally unrelated—legisla-

tion extending the benefits of the homestead laws to the Indians, regulating the purchase of supplies, authorizing the consolidation of agencies, penalizing misrepresentations in officers' accounts, directing annual reports by Indian agents, regulating the disposal of the proceeds of Indian land sales.

Such jumbling of unrelated subjects is so common a feature of our appropriation acts that it is hopeless to attempt to discover legislative intent by comparing or contrasting separate provisions.

The criminal provision here in question is of course general legislation. The provision for the purchase of cattle and their issuance to the Indians is simply an appropriation clause. The two provisions have no sort of juxtaposition in the statute that would suggest that the criminal provision was enacted to meet merely the situation created by the other. The one occurs among the "Miscellaneous" provisions (23 Stat. 94); the other is a much later section. The one was general and permanent; the other was special, and, like all the other appropriations in the act, was given no force beyond its own fiscal year. The one was passed to fulfill a general remedial purpose for the future, and it is a mere incident that the situation created by the other happens to be within that purpose. And where another situation, such as that in this case, is so clearly within the words and purpose of the general provision it would be giving artificial weight to what is after all but a tentative rule of construction for

any act, to accept the lower court's application of it to such an act as we have here.

We submit that the lower court's analysis of the motive behind the criminal provision puts too much emphasis on the notion of protecting *Government* property, while the real purpose of the statute was to protect the *Indians*.

Cattle purchased by the Government under the ordinary subsistence appropriation and issued to the Indians do not remain the property of the United States. Cattle are personal property, and when the actual possession is given to the Indians, and when to this is joined the clear intention of the statutes that the Indians shall have the beneficial use with the right to sell and trade with each other, it would be a flat contradiction in terms to say they have not the title. The criminal provision itself recognizes this, not merely because it speaks of the Indians as the "*owners* of the cattle," but because it expressly recognizes that with the consent of the Indian agent an Indian may sell such cattle. If he may sell them he must have title to them.

The lower court seems to suggest that there is a sort of limited property or, perhaps, an analogy to ownership with a restraint on alienation (R., 5). But this does not seem to fit the situation so well as the relationship of guardian and ward at common law, which, so far as title and power of disposition are concerned, affords a very close analogy to the legal consequences here, and is suggestive in getting at the legislative intent. The title is in the Indian

and for his benefit even though he is but a ward, while his capacity to dispose of it is simply limited to the extent that the guardian's approval is necessary.

The *ownership* of the cattle, then, in cases where they have been purchased by the Government out of subsistence appropriations, is, to repeat, *in the Indian*. It is not disputed that the criminal provision applies to such cattle. The motive and intent, therefore, of that provision is not the protection of Government property, *but is rather the protection of the Indians themselves*, in pursuance of the Government's policy of assisting them to become independent stock raisers, farmers, etc. In order to prevent improvident sales on the part of the Indians and to defeat the unscrupulous overreaching of the whites who trade with them, it is provided that proposed sales shall be subjected to the scrutiny of the Indian agent and his consent obtained. (*Cf. United States* v. *Douglas*, 190 Fed. 482, 490.)

Now, this motive of the statute applies equally well to the case of cattle purchased in pursuance of treaty obligations and issued to the Indians. Even if we concede that the title to the cattle is in the Indians, that does not affect the point; for, as we have shown, the title is also in the Indians in cases where cattle are voluntarily bought by the Government out of ordinary subsistence appropriations and given to them. The purpose of the statute being the protection, not of Government property, but of *the Indian*, the features that distinguish the present case from those to which it is admitted the statute applies, are irrelevant;

for, remembering that these cattle were "purchased by the Government," the reason back of that fact has nothing to do with the Indians' need of protection from their own improvidence and the white man's superior agility in driving a bargain. The prohibition, therefore, should be recognized as applying to the cattle in this case. (*Cf. McKnight* v. *United States*, 130 Fed. 659, 663–664.)

Taking the lower court's theory that the criminal provision was to protect only such cattle as the Government purchased for the purpose, as it were, of then delivering over to the Indians, we call attention to the fact that in the present case the Government expressly recognized that it did have an interest in the cattle by first putting the Government's brand on all the cattle before issuing them to the Indians. That was for the very purpose of such identification as to enable the Government to prosecute any one who bought the cattle from the Indians without the consent of the agent in charge.

There is nothing unusual in subjecting the Indians to such supervision in their disposition of cattle issued to them in pursuance of the Government's treaty obligations. For instance, by the act of May 1, 1888 (c. 213, 25 Stat. 113, 114), the United States, in consideration of certain cessions and relinquishment on the part of the Gros Ventre, Piegan, Blood, Blackfeet, and River Crow Indians in Montana, agreed to expend certain amounts of money in the purchase of stock, and in that act it was provided "that all cattle issued to said Indians for stock-raising purposes, and

their progeny, shall bear the brand of the Indian Department, and shall not be sold, exchanged, or slaughtered, except by consent or order of the agent in charge, until such time as this restriction shall be removed by the Commissioner of Indian Affairs." The same restriction is made by the act of June 10, 1896 (c. 398, 29 Stat. 321, 355), on the sale of cattle issued in pursuance of an agreement with the Indians of the Blackfeet Indian Reservation in Montana.

CONCLUSION.

This case is literally and exactly within the words of the criminal provision of the act of 1884, and since it comes within the real remedial purpose and motive of the legislation, and since Congress has specially provided similar protection in other exactly similar situations, this court should find that the provision applies to the situation here presented.

The judgment below should be reversed.

WM. MARSHALL BULLITT,
Solicitor General.

FEBRUARY 17, 1913.

○

9

Office Supreme Court, U. S.
FILED.
MAR 10 1913
JAMES H. McKENNEY,
Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1912. No. 705.

THE UNITED STATES, *Plaintiff in Error,*

v.

O. T. ANDERSON, *Defendant in Error.*

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE DEFENDANT IN ERROR.

In support of the contention that cattle delivered by the United States to the Klamath Indians as part of the purchase price of lands granted and conveyed by the Indians to the United States pursuant to the agreement of June 17, 1901, between the Indians and the United States were not "purchased by the Government" within the meaning of the Statute which prohibits outsiders from buying from the Indians any cattle "purchased by the Government."

ARTHUR C. EMMONS,
Counsel for Defendant in Error.

INDEX

	Page
I. CONTENTION OF DEFENDANT IN ERROR	1
II. ARGUMENT	1
FIRST POINT. The cattle were purchased with the Indians' money, and it makes no difference whether that money was the purchase price of his land or the purchase price of his labor	1-6
SECOND POINT. The cattle were delivered to the Indians under and pursuant to an agreement, and not by reason of an act of Congress	7-9
1. The object of the criminal provision was not to affect cattle procured by the Indians with their own money or property	7
2. The criminal provision does not apply to cattle unconditionally owned by the Indians	7-8
3. There is no similarity between the Government purchase of stock cattle for the benefit of the Indians out of surplus subsistence appropriations and its delivery of cattle to the Indians in part payment for the purchase of their land	8
4. It has never been the policy of the Government to control the property acquired by the Indians either by his labor or the exchange of other property	8

Page

5. The acts of May 1, 1888 (25 Stat. 113), and of June 10, 1896 (29 Stat. 321, 355) show that special provisions were necessary in order to limit the ownership of the Indians..... 8

In the Supreme Court of the United States

OCTOBER TERM, 1912. No. 705.

THE UNITED STATES, *Plaintiff in Error,*

v.

O. T. ANDERSON, *Defendant in Error.*

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

BRIEF FOR THE DEFENDANT IN ERROR.

The contention of the defendant in error is that, inasmuch as the cattle in question were purchased with money which belonged to the Indians, they were the absolute and unconditional owners of the cattle; and that it makes no difference whether the Indians received the money for labor or for land.

ARGUMENT

FIRST POINT.

The cattle were purchased with the Indians' money, and it makes no difference whether that money was the purchase price of his land or the purchase price of his labor.

The agreement between the United States and the Indians (34 Stat. 368, pages 3-5, brief for the United States) provides that the Indians "for the consideration hereinafter named do hereby cede, surrender, grant and convey to the United States all

their claim, right, title and interest in and to" certain lands granted them by treaty of Oct. 14, 1864. This agreement within itself and by its own terms is a distinct and positive recognition of the fact that the Indians *owned* this land. Whatever may be said in relation to the Government's fatherly and protective interest in the Indians (and there is something to be said on both sides of that question) it is perfectly certain that the Government *did not* own these lands and that the Indians *did own them.* And in order to maintain correct reasoning on the subject in hand it is necessary to get clearly in mind the basic facts of this discussion, namely, that the Indians owned some six hundred thousand acres of land which the United States purchased from them under the terms of this agreement—an agreement between the seller and buyer of land. The price to be paid amounted in the aggregate to five hundred and thirty-seven thousand dollars and this purchase price, according to the agreement was paid as follows:

(a) Twenty-five thousand dollars in cash.

(b) Three hundred and fifty thousand dollars to be deposited in the United States Treasury at five per cent., the interest on which was to be paid to the Indians annually.

(c) The remainder (after the payment of some attorneys' fees which the Indians had incurred in protecting their interests in this land sale) was to be paid to them in the following manner:

(1) In the drainage and irrigation of their lands.

(2) In stock cattle to be delivered to the Indians.

The Secretary of the Interior, by this agreement, was designated as the person who was to make the expenditure for drainage and irrigation and for the purchase of cattle. But let us bear in mind that all this was done, and to be done, under an agreement between these two parties, namely the United States and the Indians, and that the Secretary of the Interior had only such rights and powers and duties as the agreement gave him. The Secretary of the Interior, as an officer of the Government, and independent of the agreement, had no power whatever in the matter. As a convenient agency in carrying out the terms of the agreement, the person who might occupy the office of Secretary of the Interior was given certain powers and charged with certain duties all according to the agreement between the contracting parties.

None of this money was used for irrigation or drainage of land, and so, as by the terms of the agreement, it was used in the purchase of cattle. Consider now, the relation of these parties, the United States on the one hand and the Indians on the other, in the delivery by the former and the receipt by the latter, of these cattle. How did the Indians come to get the cattle and what did they represent? As a business transaction it is all simple, direct, perfectly clear and absolutely certain. The Indians owned certain lands which by written agreement they had sold to the United States. By the terms of that agreement the United

States was to pay part of the purchase price in cash, part by a deposit in the Treasury of the Government (a deferred payment upon which they were to receive interest) and the remainder in cattle. Nothing can obscure the simple fact that these cattle were a part of the purchase price of that land, and that, too, under the direct terms of a positive and voluntary agreement. The United States was not *giving* the Indians anything, it was *paying* them something according to its agreement. The United States was discharging the obligation of a cold-blooded contract (and it was cold blooded enough in all conscience when the price paid for the land is considered). If these cattle were not the final payment for that land, then the final payment has not been made.

Under the agreement for the sale of this land, the Government paid the Indians twenty-five thousand dollars in cash. Suppose, when an individual Indian received his part of this money he had used it in the purchase of cattle, no one would pretend that such cattle would come within the contemplation of this statute. And what is the difference, whether the money passes directly from the hand of the Indian to that of the seller of the cattle or whether it passes from the hand of the person who by the agreement was constituted the agent for that purpose? What strange magic is there in the palm of Indian officialdom thus to change the nature of this simple business transaction? It is most earnestly submitted that there is absolutely no escape from the conclusion that these cattle thus de-

livered to these Indians were so delivered as part of the purchase price of their land pursuant to the agreement made by them with the United States, and as such were as absolutely the property of the particular Indian to whom they were delivered as if he had exchanged for them any other of his own property or paid for them by his labor.

That being true, are these cattle within the contemplation of the Criminal Statute upon which this indictment is predicated? This Statute (23 Stat. 94) was passed in 1884 and provides:

> "That where Indians are in possession or control of cattle or their increase *which have been purchased by the Government*, such cattle shall not be sold, etc."

This Statute constitutes a paragraph in the Indian Appropriation Bill of 1884, and, as showing the surrounding circumstances of limitation, attention is directed to the fact that in the paragraph of that bill making appropriation for "subsistence" it is provided that if all the money thus appropriated was not used for that purpose, the remainder might be used for the purchase of stock cattle which should be issued to the Indians. Similar provision has been made in the Indian Appropriation Bills since that time. Here is provision for purchase of cattle "by the Government," and with the Government's money. And here also is the creation of conditions exactly covered by that criminal paragraph of the Statute and which, too, exactly fulfill all of its provisions. The very same Act

which gives us the criminal statute, furnishes also the conditions which demonstrate the purpose and intention of that statute. This, of course, is not to say that there might not be other provisions in other laws creating conditions covered by this criminal statute. However, the Government could not purchase cattle for the Indians without the authority of some specific statute.

Thus we see that the cattle contemplated by this statute were cattle purchased by the Government with public money *and given to the Indians.* Indeed the very language of the statute itself is conclusive on that point. Cattle, *"which have been purchased by the Government"* means, of course, cattle purchased with the money of the Government. But how can it be said that these cattle *were purchased by the Government?* As we have seen, the purchase of these cattle was made in pursuance of an agreement made between the United States and the Indians. That contract designated the person occupying the office of Secretary of the Interior as the agent who was to make the purchase, and the Government, as such, had nothing to do with the matter. There was no purchase by the Government, but merely an officer of the Government acting as the agent in making the purchase, and all pursuant to the terms of a written agreement. In addition to this, as shown above, the cattle were purchased by the Indians with their own money.

SECOND POINT.

The cattle were delivered to the Indians under and pursuant to an agreement, and not by reason of an Act of Congress.

The transaction is not within the letter, much less the spirit of the statute upon which the indictment is predicated. These cattle were not delivered to the Indians by force of an Act of Congress, as such, but by reason of an agreement between the parties—the Indians and the United States.

It is true that Congress passed an Act ratifying the agreement and providing for carrying it out on the part of the Government, but that was merely the act of one of the contracting parties ratifying an agreement made by its agent and providing for complying with that agreement.

It was as if a Board of Directors of a corporation ratified the acts of its agent in the purchase of property and appropriated money for the payment of the purchase price.

In support of the contention of the Government the acts of May 1, 1888 (25 Stat. 113, 114) and June 10, 1896 (29 Stat. 321, 355) are cited as showing that there is nothing unusual in subjecting the Indians to supervision in the disposition of cattle issued to them by the Government. In these two instances there was the special provision in the acts themselves that the cattle should not be slaughtered or disposed of, without the consent or order of the Indian Agent. There is no such provision in the agreement by which the cat-

tle embraced in this indictment were delivered to the Indians nor in the act ratifying the agreement. The fact that such a provision was inserted in each of the acts referred to, conclusively shows that the Congress did not consider that the cattle therein mentioned were subject to the statute upon which this indictment is predicated. If the act of July 4, 1884 (23 Stat. 94) had applied to the cattle provided for in the two acts cited by the Government there would have been no necessity for that provision of those acts preventing the Indians from disposing of the cattle. We must conclude that the provision in these two acts preventing the free disposition of the cattle by the Indians was necessary or it would not have been inserted in the act, and therefore since there is no such provision in relation to the cattle here in question we must further conclude that there is no limitation upon the free disposition of the cattle by the Indian owner. And that conclusion, as we have seen, is in harmony with the nature of the transaction by which the Indians obtained the cattle. These cattle were not conditionally bestowed upon the Indians by the Government for the purpose of promoting "their civilization and improvement," but were delivered to them as part payment for their land. The title of the Indians to these cattle was absolute and unconditional. This conclusion is not only established by the nature and terms of the agreement between the Indians and the Government, but is further justified by the fact of the absence of any limitation by Congress in the act ratifying that agreement.

It is respectfully submitted that the judgment below should be affirmed.

ARTHUR C. EMMONS,
Counsel for Defendant in Error.

March 3, 1913.